

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORIS M. GALLON and U.S. POSTAL SERVICE,
OAKLAND PARK BRANCH, Fort Lauderdale, FL

*Docket No. 01-1315; Submitted on the Record;
Issued January 8, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits for the right trapezius strain caused by her September 29, 1997 employment injury; and (2) whether appellant has met her burden of proof to establish that her cervical degenerative is causally related to her accepted employment injury.

On September 29, 1997 appellant, then a 46-year-old postal clerk, filed a traumatic injury claim asserting that the pain in her right shoulder and neck were a result of throwing parcels that day. The Office accepted her claim for right trapezius strain and paid compensation benefits.

On May 27, 1998 Dr. Khosrow Maleki, an orthopedic surgeon and appellant's attending physician,¹ reported as follows:

“PROGRESS: This patient has come in and still complains of pain in the right trapezius. On palpation, she has some tenderness over the right trapezius but no complaints about the upper extremities. She has had an MRI [magnetic resonance imaging] [study] done of the cervical spine which the report is available to me. This states that the patient has multilevel bulging discs but in either of these levels, the cord is not indented or compressed. The neural foramina are relatively patent. This was present at C3-4, C4-5, C5-6 and C6-7. The spinal cord is not compressed. There is normal signal intensity.

“TREATMENT PLAN: Therefore, the patient has multilevel degenerative disc disease. There was no accident, work related which has caused this. At best, she has sustained a right trapezius strain. She has recovered from that. At this point she has reached the MMI [maximum medical improvement] with no permanent physical impairment as far as a work-related injury is concerned. These bulging

¹ Appellant initially saw Dr. Maxine E. Hamilton, an internist, who referred her to Dr. Maleki.

discs are all preexisting and have nothing to do with the work-related injury; therefore, I have released her back to her regular work without any limitation as far as the work[-]related injury is concerned. I explained to her that this degenerative disc disease is preexisting and there is no relation to the work-related injury which actually she has had no injuries except she claims during the course of lifting the parcels, she started having this pain. This cannot cause bulging discs or degenerative discs in her neck. These are all preexisting. She is released back to her regular work. If she has any interest in following this further, explained to her that she needs to see her personal physician about these cervical discs which are preexisting. This has no relation to the work-related injury. She is discharged. She has no impairment because of this work-related injury.”

In a decision dated June 8, 1998, the Office terminated appellant’s compensation benefits on the grounds that appellant had recovered from her single-episode right trapezius strain with no residuals.

Appellant requested an oral hearing before an Office hearing representative, which was held on March 24, 1999. She submitted a March 1999 note from Dr. Raul T. Aparicio, an orthopedic surgeon, who stated that appellant was under his care from July 20 to September 24, 1998 with a diagnosis of cervical sprain and strain with herniated cervical disc.

In a decision dated June 22, 1999, the hearing representative affirmed that the June 8, 1998 decision terminating appellant’s compensation benefits.

Appellant requested reconsideration and submitted an August 2, 1999 report from Dr. Aparicio, who stated:

“[Appellant] has been under my care since July 20, 1998. At that time the patient presented to my office with complaints of pain in the posterior neck and right posterior shoulder. She told me that she had been working for the [employing establishment] doing lifting and package sorting and had developed the symptoms as of September 29, 1997. She had been under the care of a Dr. Maleki who ultimately determined that she had degenerative disc disease of the cervical spine which was multilevel. He felt that there was no work injury that caused these bulging discs or degenerative discs and that the discs were preexisting to the work[-]related injury.

“The patient has asked me to address this. I have been, as stated, treating her since July 1998. Her physical examination and diagnostic impression is consistent with a chronic cervical sprain/strain as well as disc herniation at C4-5, 5-6 and 6-7, with the C6-7 disc herniation being the largest and effacing the subarachnoid space.

“While I agree with Dr. Maleki that these very well could have preceded any kind of strain injury related to her [employing establishment] work, the patient has no past history of pain or otherwise which can be documented. It is not unusual to

have preexisting disease aggravated by work-related trauma or repetitive trauma, and in this case this is what I feel has occurred with [appellant].”

In a decision dated October 29, 1999, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that Dr. Maleki’s opinion constituted the weight of the medical evidence.

The Board finds that the Office met its burden of proof to justify the termination of appellant’s compensation benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

The Office terminated appellant’s compensation benefits effective June 8, 1998 based on the May 27, 1998 opinion of Dr. Maleki, appellant’s attending physician. Dr. Maleki reported his findings and concluded that appellant had recovered from her right trapezius strain of September 29, 1997. Further, he explained that her multilevel cervical degenerative disc disease was preexisting and had nothing to do with the work injury. Dr. Maleki’s opinion was clear and unequivocal and based on an accurate factual and medical history. As there was no medical opinion evidence to the contrary, the weight of the evidence positively demonstrated that appellant’s entitlement to benefits for the right trapezius strain of September 29, 1997 had ceased. The Office therefore met its burden of proof in justifying the termination of appellant’s benefits for the accepted condition on June 8, 1998. The Board will affirm the Office’s October 29, 1999 decision on the issue of termination.

The Board also finds that appellant has not met her burden of proof to establish that her cervical degenerative condition is causally related to her accepted employment injury.

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁴

Causal relationship is a medical issue,⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

To support appellant's claim that her multilevel cervical degenerative disc disease is causally related to the September 29, 1997 employment injury, appellant submitted the August 2, 1999 report of Dr. Aparicio, an orthopedic surgeon. She had been under Dr. Aparicio's care since July 20, 1998. He noted her complaints and history, as well as Dr. Maleki's opinion that appellant's cervical degenerative condition was unrelated to her work injury. Dr. Aparicio agreed that this condition could very well have preceded any kind of strain injury related to appellant's work duties. Appellant had no documented past history of pain, however, and it was not unusual for a work-related trauma or repetitive trauma to aggravate a preexisting disease. Dr. Aparicio felt this is what occurred in appellant's case.

Although Dr. Aparicio's opinion is supportive of appellant's claim that her federal duties aggravated her cervical degenerative condition, it is of diminished probative value. He based his opinion solely on two factors: the absence of a past history of pain and the observation that it was not unusual for a work-related trauma or repetitive trauma to aggravate a preexisting disease. First, the Board has held that when a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.⁹ Second, that work-related trauma or repetitive trauma may aggravate a preexisting disease suffices only as a general observation and does not show whether such an aggravation occurred in appellant's case. Dr. Aparicio did not explain how such trauma could cause an aggravation and he provided no analysis of clinical findings or other medical rationale to support his opinion that an aggravation occurred in appellant's case.

Because Dr. Aparicio's opinion is not well rationalized, appellant has not met her burden of proof. The Board will affirm the Office's October 29, 1999 decision on the issue of employment-related aggravation.

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The October 29, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 8, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member